

**PORT OF OLYMPIA COMMISSION  
MINUTES OF REGULAR MEETING**

**June 11, 2007**

---

**CALL TO ORDER**

President Telford called the meeting of June 11, 2007, to order at 5:00 p.m. at the LOTT Board Room in Olympia. Commissioners McGregor and Van Schoorl were also in attendance.

President Telford announced that the Commission just came from Executive Session where they discussed litigation. The session began at 4:00 p.m. and adjourned at 4:15 p.m.

President Telford announced that the Commission would hold a special meeting on June 18, 2007. Any items not covered tonight will be held over until the 18<sup>th</sup>.

Staff in attendance were: Executive Director Ed Galligan, Administrative Manager Jeri Sevier, Airport Director Rudy Rudolph, Marketing and Business Development Director Kari Qvigstad, Harbor Director Bruce Marshall, Marine Terminal Director Jim Amador, Finance Director Steve Davis, Engineering Director Jeff Lincoln, Communications Manager Patti Grant, Front Desk Coordinator Jessie Bensley, and Marketing Program Assistant Maureen Malahovsky. Carolyn Lake, the Port's Legal Counsel, was also in attendance.

Public in attendance were as follows: Representing *The Olympian* was Jim Szymanski. Others in attendance who filled in the sign-in sheet included: Harold Clark, Tom Howdeshell, Suzanne Nott, Richard Wolf, Diane Sonntag, Richard Stedman, Arthur West, Bill Pilkey, Jerry Dierker, Keith Bausch, Carolyn Lake, Jan Witt, Patrisia DeFrancesca, Rick Radcliff, and Sharron Coontz, Harriet Ammann.

**APPROVAL OF AGENDA**

The agenda was approved as presented.

**PUBLIC COMMENT**

**Jerry Dierker, resident of Olympia**, commented that he did not get a call back from the Port on a SEPA issue. He indicated that they got notice about the Port's decision; however, they did not get copies of the exhibits. He also noted that he did not get notice of the SEPA Policy update.

**Bill Pilkey, resident of Olympia**, commented that no one knew about the check to the FAA when he mentioned it at the last meeting, since no one knew about it, who is running the Port? He also asked where is the quarterly budget update that was promised? President Telford said that this issue of the check to FAA was brought up at the last meeting and that Director Galligan was prepared to address that question tonight.

**Jan Witt, resident of Olympia**, asked about the .5 acres of land in the cargo yard, she noted in a public records request that an agenda says that there is a paving permit required, where the SEPA indicated that no paving permit was required.

**Sharon Coontz, resident of Olympia,** commented on the SSLC. She noted that she owns property near the site. She recently met with Senator Swecker and he said the Port of Olympia was offered 1000 acres in Centralia for this use. Commissioner Van Schoorl indicated that the offer was never made.

**Robert Rose, resident of Olympia,** commented on the dioxins. He indicated that he has heard people talking about this issue, so he did research on his own and found that when the berth is dredged, 4,000 truckloads of materials will be hauled out. Of the 4,000 truckloads, 3.5 grams of that will be dioxins. The price of this project has rose to \$6.5 million dollars, so \$1.5 million will be spent for every gram of dioxins found. Mr. Rose also commented on the budget and Port taxes. He indicated that it is hypocritical for people complain about taxes, when it is the same people trying to deter business and shut down the Port, these people are also known as the Carnegie Group.

**Arthur West, resident of Olympia,** commented that the union is a conspiracy to threaten citizens. He commented that he is no part of the Carnegie Group. Also commented that he wanted to talk about the SEPA 07-03 and wanted to know why it was not a part of the Weyerhaeuser project. Commissioner Telford responded that the rail project was underway before Weyerhaeuser was ever talked about.

**Keith Bausch, resident of Olympia,** commented that he has never threatened people. Is speaking our opinion is threatening?, he asked. Mr. Pilkey and Mr. West say that we need to be civil, however, they are not. He also commented that the terminal has lost over \$2 million in revenue from the couple of citizens that have used the courts to stop the Weyerhaeuser project. The goal is to shut down the marine terminal, continue to bring on lawsuits until people doing business with the Port go away. These few citizens bringing forth lawsuits have not won any lawsuits, but have held up projects.

**Diane Sonntag,** commented that she hopes there is a way to work together, after listening to the comments tonight, the people here do not seem like they are willing to work with the Port. Commissioner Van Schoorl indicated that the Commission wants to work with the Maytown residents, and the people coming to the Commission meetings week after week with their issues are not coming to try to work with us.

## **COMMISSIONERS REPORTS**

Commissioner McGregor reported he attended the WPPA Spring Conference in Spokane.

Commissioner Van Schoorl noted he attended the CLAMP meeting to receive the latest of the four reports on estuary study on GA website. The Legislature has allotted money to this project.

## **EXECUTIVE DIRECTOR REPORT**

Mr. Galligan responded to a citizen's question that was asked at a prior commission meeting concerning the payment in the amount of \$905,396.63 to FAA is for professional services related to airport projects. Mr. Galligan said that this payment is related to the FAA's standard operating requirements. He noted that the Port is and was reimbursed for 95% of the payment eleven days after it was made. He said that the FAA has a two-step process and procedure related to specific elements of an airport project for which the FAA's facility branch, or its designated contractor, must accomplish the work, for example, runway approach lighting. Mr. Galligan said the question likely came up from documents provided in response to a citizen's public records

request. He noted that the documents that were provided in that response also included, but were apparently overlooked by the citizen, information about the Port being reimbursed by the FAA in the amount of \$860K or 95% of the \$905K payment the Port made to the FAA eleven days prior.

Mr. Galligan stated that at the last meeting Ms. Sue Danver asked about the Habitat Management Plan at the airport. Mr. Rudy Rudolph reported that Ms. Danver has been given a copy of the draft Habitat Management Plan that staff is currently working on with the Fish & Wildlife and FAA. The final plan will be brought to the Commission at a future meeting. He also noted that a habitat protection plan was also issued with the SEPA.

Mr. Galligan indicated that he has asked Mr. Richard Stedman to come to this meeting to talk about reducing air emissions at the Port. He will be providing an advisory later in the meeting.

Mr. Galligan mentioned that he attended the Thurston-Mason E3 (education, environment, economy) Regional Summit on Environmental Education at The Evergreen State College, June 1<sup>st</sup>. He said the summit appeared to attract several hundred attendees from both our region and beyond and was well sponsored by a broad range of private businesses, cities and educational institutions. Mr. Galligan indicated that he has initiated discussions with academic representatives of the College to explore the possibilities of having one of the College's graduate students majoring in environmental sciences to do an internship at the Port.

## **CONSENT CALENDAR**

**Minutes Approval.** The Commission unanimously approved the minutes from the May 14, 2007 meeting as published. President Telford apologized for not rearranging the agenda at the Tenino Meeting after seeing how many people were there to address the SSLC issue.

**Bills and Vouchers.** The bills and vouchers in the amount of \$1,650,069.42 were approved. General Fund Checks Issued: 042994-043294. Voided Checks: 042802, 042862, 042988, 042997, 043002-043003, 043051, 043057, 043128, and 043178 – 043227.

### **Partial Assignment: Airdustrial Equity LLC**

Olympia Airdustrial Park Associates, LLC entered into a ground lease dated August 25, 2004 with the Port that was subsequently amended. That lease was assigned to Airdustrial Equity, LLC on November 21, 2005. Airdustrial Equity, LLC as assignee created a binding site plan and then condominiumized the development under the terms of the lease and provided for an owner's association to manage the day to day affairs of the condominium and act as the sole representative of the unit owners on all matters relating to the Port and the Lease. Airdustrial Equity, LLC constructed a building on the leased premises related to Unit 1 of the condominium, which consists of approximately 176,000 square feet, and which has been leased for offices for the Washington State Attorney General.

Olympia Airdustrial Park Associates, LLC has formed Phase II Airdustrial Equity, LLC to build new buildings on the leased premises related to Units 2 and 3 of the condominium, and Airdustrial Equity LLC as assignor desires to assign to Phase II Airdustrial Equity, LLC (as assignee) an interest in the Lease as it relates to the leased premises to the extent related to Units 2 and 3 of the condominium.

Airdustrial Equity, LLC and Phase II Airdustrial Equity, LLC both wish to transfer lease rights and obligations related to the common elements of the condominium to the Airdustrial Plaza

Condominium Association (Owners Association) who will act as manager of the common elements, as manager of the day to day affairs of the condominium, and as sole representative of the Unit Owners under the Ground Lease.

The assignee, Phase II Airdustrial Equity, LLC, is willing to accept this partial assignment from Airdustrial Equity, LLC, the assignor, and the Owners Association is willing to accept the rights and responsibilities as Manager of the common elements of the condominium, as Manager of the day-to-day affairs of the condominium, and as sole representative of the Unit Owners.

The Commission unanimously ratified the partial assignment for Airdustrial Equity LLC.

## **ACTION CALENDAR**

### **Runway Line of Sight Grant Approval and Bid Award**

Mr. Rudy Rudolph reported that on April 23rd, the Commission authorized staff to advertise for bids for the 2007 Runway 17/35 Rehabilitation and Line of Sight Corrective Work (FAA Phase 2). Six bids were received.

He noted that the Engineer's estimate including tax was \$2,237,602 (\$2.24m). The bids received ranged from \$1,959,726 (\$1.96m) to \$2,732,637 (\$2.73m). The low responsive bidder was Wilder Construction Company from Olympia, Washington at \$1,959,726. This contractor has worked on previous Port projects and has performed in an acceptable manner.

Mr. Rudolph noted that the Director of Engineering has reviewed the bids and concluded the bid process has conformed to applicable laws and directives. The Federal Aviation Administration (FAA) has concurred that the low responsive bidder was Wilder Construction Company.

He indicated that on June 7, 2007, the Port of Olympia received grant offer AIP-14 from the FAA in the amount of \$1,950,000 to fund the Runway 17/35 Rehabilitation and Line of Sight Corrective Work (FAA Phase 2). The Port 5% matching share for this grant would be \$102,632. There is currently \$350,000 in the 2007 approved Capital Plan for the Port-matching share for this project.

Mr. Rudolph reported that on June 1, 2007, Thurston County Court Judge Hicks heard oral arguments and dismissed the Runway LOS and Rehabilitation SEPA appeal, ruling in favor of the Port. The court validated the Port of Olympia SEPA Policy and process and dismissed the appeal citing the appellant's lack of legal standing in the case.

Additionally, Mr. Rudolph stated that in reviewing the Port of Olympia Executive Director Mr. Galligan's Findings of Fact, the Court found that substantial information in the record supported the Findings of Facts. Additionally, the court found:

- No errors in the Port's Conclusions of Law.
- The Port is the proper SEPA Lead Agency for this Project.
- There was no conflict of interest by the Port acting as Project proponent and SEPA Lead Agency; the Port complied with the required degree of separation under SEPA. The Port's Reconsideration process and the Court's judicial review provide an additional measure of independent review.

- The Port's Reconsideration process is not flawed.
- The Port may lawfully require appeal and reconsideration fees.
- To the extent that Petitioners argued the NEPA decision was flawed, the Court found the Project was correctly determined to be "categorically exempt" such that no further NEPA EIS or environmental review was needed.

This Project was not improperly "piecemealed" and the Port did not err in failing to address cumulative impacts.

**Jerry Dierker, resident of Olympia,** commented that there has not been any written decision by the Judge. He also commented that this is not the bid that was authorized. President Telford indicated that the Commission did approve this project; there were two portions of this project. Mr. Rudolph indicated once again that the FAA programmed \$4.7 million for the project, however, they determined to award the amount necessary for this year and the remainder will be given next year. Mr. Dierker indicated that he still does not understand this because the project scope is for \$4.7 million and there has been a change in what has been discussed at these meetings. He noted that this also opens up the Port to another legal action because this is a final agency action.

**Harold Clark, resident of Olympia,** how many people bid on the project. Mr. Rudolph indicated that six bids were received.

**Jan Witt, resident of Olympia,** commented that in 1994 the Port issued a strategic plan and in that plan there were not any changes to the Olympia Regional Airport and therefore no environmental assessment was needed. Over the past years over \$60 million has been spent at the airport. Are Port Commissioners still saying that the airport is not expanding?

**Arthur West, resident of Olympia,** commented that Mr. Rudolph stopped short of telling the whole story of what happened at the Court ruling on the airport project. He read a statement from the judge.

The Commission unanimously approved the Executive Director to accept the FAA grant offer in the amount of \$1,950,000 and awarded the bid for construction Contract #600 to Wilder Construction Company in the amount of \$1,959,725.93.

### **Resolution 2007-13 SEPA Policy Adoption**

Mr. Jeff Lincoln indicated that this agenda item follows up on previous Commission SEPA Briefings and specifically the Commission's May 14 meeting where Staff introduced revisions to the Port's SEPA administrative SEPA policy.

Ms. Carolyn Lake noted that at the May 14th Commission meeting where the proposed SEPA Policy Amendments were reviewed, the Commission listened to public comments. Thereafter, in response to Commission direction, the Staff:

- Announced that the Commission June 11 meeting will include action by Commission on the proposed SEPA Resolution,
- Invited the public to comment in writing to the Port through June 5th,
- Post the Draft Resolution on the Port's web site and invited public comment, and
- Placed notice of the SEPA resolution in the newspaper similar to the Port's announcement of SEPA Decisions.

Ms. Lake reported that as of June 6, 2007, the Port had not received any written public comments on the proposed changes. Comments were received from Jan Witt on June 7.

In response to Commission discussion at the last meeting, the Staff:

- Extended the time allowed for Staff to respond to written comments received for site-specific SEPA determinations from three (3) days to ten (10) calendar days.
- Extended the deadline to appeal a SEPA determination from seven (7) to fourteen (14) days from the end of the comment period. There is a substitute resolution to extend the appeal period to 21 days.

Resolution 2007-13 has been amended to reflect recommended SEPA Policy changes. The amendments are summarized below.

### **SEPA Policy Amendments**

**Deleted Process: 9.1 Appeal Section eliminates Reconsideration Request Process:** The current SEPA process contains a mandatory “Request for Reconsideration” process as a condition precedent to filing an administrative appeal. The Reconsideration process was intended to be an informal process for the Responsible Official to meet with commenter’s to seek to share information and potentially resolve prior to a formal appeal being filed. This step has been omitted. Appeals are required to be filed fourteen (14) ten calendar days after the comment period.

**New Section: 8 Comments.** Formalizes the Port’s current practice to respond in writing to all comments received. The Port will respond to comments within ten (10) days after the close of the comment period. This allows the public fourteen days total to decide whether to file an appeal, and allows four (4???) days after the Port’s response to comments are issued to confirm whether to file an appeal.

#### **Modified Section 9.2. Commission Options for Action.**

- Retains the three pronged option for Commission action on appeal:
  - 9.2.1 Elect to hear the appeal, and after a public hearing, issue a Final Decision;
  - 9.2.2 Forward the appeal to a Hearing Examiner, who would hold a public hearing and issue a Final Decision; or
  - 9.2.3 Decline to hold an administrative appeal hearing. In this case, the Decision of the Responsible Official becomes the Port’s Final Decision.
- Adds a new section clarifying that the Commission action in deciding the procedural option is not on the record. Clarifies that no substantive information will be sought or considered by the Commission and that this procedural action is not a SEPA appeal hearing.
- Adds a new section that allows the Commission to seek and consider the Appellant(s)’ preference on which appeal hearing process to follow, and makes choosing the Appellants’ preference an option but not mandatory.

**New section. 9.3.2. ii. Standing for Administrative Appeals.** Provides that only those parties that commented on an environmental determination have standing to file an administrative

appeal. This is to ensure that appellants first participate to make their concerns known prior to the time consuming and adversarial step of an appeal. Thurston County Code has a similar provision, and parallels the Port's current SEPA requirement that only Requestors for Reconsideration had standing to appeal, and only parties who filed an administrative appeal had standing to file a judicial appeal.

**New Section 9.4.9. Independent Legal Counsel.** Adds a new section that in the event the Commission elects to hold the appeal hearing, the Commission will retain independent legal counsel.

**New Section. 9.5.3. Refund Where Appellant(s) Substantially Appeals.** Adds a new section that provides if the presiding entity (Hearing Examiner or Commission) determines in the Final Decision that Appellant(s) substantially prevailed on appeal, the appeal fee paid shall be refunded to the Appellant(s).

**New Section. 9.6.3. Costs of Preparing Administrative Record on Appeal.** Adds a new section that provides that the costs of preparing the Port's Administrative Record for any judicial appeal are to be paid equally by the Port and Appellant(s) as a condition precedent to perfecting the appeal. At the conclusion of the judicial appeal, if the Superior Court determines that Appellant(s) substantially prevailed on appeal, the costs paid by Appellants are to be refunded to the Appellant(s).

**Misc. Changes.** The Resolution Sections are renumbered, some statutory citations are corrected and updated, references to critical areas and categorical exemptions are modified to reflect Port's compliance with Olympia and Tumwater and other jurisdictions' ordinances pertaining to same, an effective date is added, and public notice processes are clarified.

President Telford commented that he has several issues with the proposed policy. He commented that in Section 8, he would like to see the language changed to make the response to comments publicly available and not say "encouraged". In addition he asked for clarification on what an "addendum" referred to. President Telford also commented that he would not support 9.6.3 Cost Sharing of Administrative Records on Appeals.

Commissioner McGregor indicated that he thinks the cost of the administrative record should be born by both parties. However, missing from the policy is the statement that it a refund needs to be returned within so many days. Most jurisdictions fall within the LUPA process, Ports are different in that regard. He noted that under LUPA the costs are shared.

**Jerry Dierker, resident of Olympia,** indicated that he did not get notice about the SEPA policy, and noticed that there were changes to the policy since the May 14<sup>th</sup> meeting. Ms. Lake indicated that there were some changes. He provided comments in writing to the Port.

**Patrisa De Francesca, resident of Olympia,** indicated she was not in favor of the administrative record and charges for that. She noted that last week she got a transcript from the court hearing regarding the Port and the judge indicated that the Port is duplicating documents and making the Administrative Records large and costly.

**Jan Witt, resident of Olympia,** indicated that Carolyn Lake is the attorney for the respondents and the Commission should have independent counsel look at the SEPA policy. She disagreed with the statement that the Port resolution trumps the WACs. The 21 Days for the appeal to be delivered to the court is a LUPA requirement, the Port does not have land use authority. She

noted that it should be 30 days. She also commented that the cost of administrative records – unlike LUPA the legislature wanted the public to be involved in the SEPA process and any thing that deters the public from being involved should not be included. She also indicated that in Section 9.4 – appellants should get the last word, not the other way.

**Keith Bausch, resident of Olympia**, commented that as a taxpayer and citizen, he feels that there should be some cost to appellants, the process can be abused and if they want to challenge the process that should put their money where there mouth is.

Commissioner Van Schoorl suggested that this item be held over until next meeting and he indicated that the Commission has heard the public testimony to consider. Commissioner Van Schoorl made a motion to adopt Resolution 2007-13. Commissioner McGregor seconded the motion. Commissioner Van Schoorl made a motion to table the motion to adopt the Resolution to the next meeting. Commissioner McGregor seconded the motion. The Commission asked Ms. Lake to address items that have been brought up tonight during public comment at the next meeting.

## **ADVISORY CALENDAR**

### **Clean Air – Diesel Retrofitting Grant Opportunities**

Mr. Richard Stedman, Executive Director of the Olympic Region Clean Air Agency (ORCA) provided the Commission with information on the ORCA agency and specifically the Diesel Retrofit funding opportunities for the Port.

He commented that Port staff is currently working with ORCA on retrofitting some of the equipment at the Marine Terminal. Air pollution from diesel causes health related problems. He noted that there are solutions to reduce emissions at the Port and he looks forward to working in partnership with the Port to reduce emissions at the Port.

Commissioner McGregor indicated he is encouraged by the retrofitting program and would like to see more of that. He also commented that he has also worked with ORCA with other projects and have had a good relationship.

Mr. Stedman indicated that ORCA has also had conversations with Weyerhaeuser and they are also interested in this program.

Commissioner Van Schoorl thanked Mr. Stedman for coming to the meeting to provide an update and he also thanked staff for following up with this. He also commented that he is pleased to hear the comment that ORCA is working on reducing emissions on school buses, as that is the largest danger to our children in sending them to school every day.

## **ADJOURNMENT**

President Telford announced that the Port Commission would be holding a joint meeting with the City of Olympia beginning at 7:00 p.m. at the Olympia Fire Station. He also announced that the Port Commission would hold a special meeting on June 18, 2007 at 5:30 p.m.

President Telford adjourned the meeting of June 11, 2007 at 6:43 p.m.

PORT OF OLYMPIA COMMISSION

---

President

---

Vice President

---

Secretary-Treasurer